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OIG Reports EPA Has Yet To Resolve Dozens Of Its Recommendations

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Updated Story

EPA's Office of Inspector General (OIG) says the agency has yet to resolve 25 recommendations that were disputed by officials when they were first issued in numerous earlier investigations on a wide variety of topics -- and that EPA has not yet fully implemented over 100 other recommendations with which it had previously agreed.

The OIG Aug. 4 released a "compendium" report that lists all of its recommendations that are still outstanding. The office counts recommendations that the agency has disagreed with as "unresolved," and describes those that EPA agreed to but has yet to implement as "open."

Many of the open or unresolved recommendations relate to Trump-era disputes between EPA management and the OIG, potentially providing the Biden administration a chance to address some issues.

An EPA spokesperson did not respond to a request for comment.

The compendium is based on the OIG's latest semi-annual report to Congress, dated May 29, listing such recommendations that EPA has either not agreed to or not acted upon. Its data is accurate as of March 31, the OIG says.

Seeking to promote the value of its recommendations, the OIG says that "[t]he total potential monetary benefit was, on average, \$167 million for the open recommendations and \$7.5 million for the unresolved recommendations." This includes benefits to health, and also organizational benefits such as improved efficiency.

Under the unresolved category, EPA lists several examples, including those relating to the Trump EPA's rule lifting Obama-era restrictions on retrofitted "glider" trucks; the need to improve EPA oversight of state implementation of municipal landfill air emissions rules; EPA's need to improve its disaster preparedness to address air emissions during emergencies; and EPA's failure to provide a report to Congress on its progress in implementing the BEACH Act, a coastal environmental protection law. Some recommendations also relate to EPA's failure to properly monitor "time-off awards," the OIG says, potentially resulting in lost productivity.

The OIG in December 2019 issued a report strongly critical of the glider truck repeal rule proposed by the Trump EPA under then-administrator Scott Pruitt, faulting it on several grounds. The rule ultimately stalled and never went into effect, but the OIG still says its concerns have gone unanswered.

The report said the 2017 proposal "did not comply" with requirements of two executive orders, EPA's own rulemaking guidance or Federal Records Act requirements. Specifically, the report said the plan should have been deemed "economically significant" under executive order (EO) 12866, a threshold that requires detailed analysis of costs and benefits. Additionally, OIG found that the plan also violated EO 13405, which requires an "evaluation of the environmental health risks to children" for economically significant rules.

In its new compendium, the OIG says, "Negotiations have not progressed, as the EPA and the OIG cannot agree on corrective actions to satisfy the recommendation" to "document the decisions made during the glider repeal rulemaking process, including substantive decisions reached orally, to comply with applicable record-keeping and docketing requirements." The Biden EPA would appear unlikely to defend the Trump-era rulemaking, however.

The OIG also in July 2020 recommended that EPA tighten its oversight of states' implementation of municipal solid waste landfills, after finding that EPA regional offices had not verified compliance by Georgia and Texas. The OIG made a series of recommendations to help EPA ensure compliance, but EPA countered with a series of its own suggestions that the OIG did not accept.

Disaster Preparedness

Better disaster preparedness is also a theme of the OIG's new report. The OIG in a 2019 report issued a series of recommendations to ensure continuity of air quality monitoring during emergencies, after Hurricane Harvey in 2017 temporarily knocked out air monitors in Texas and resulted in air toxics releases.

For example, the OIG recommended that EPA "develop general guidance to help state and local agencies and external stakeholders develop air monitoring plans for emergency situations in heavily industrialized areas so that usable data are collected in targeted areas of concern," and "develop, in coordination with the associate administrator for Public Affairs, a plan for providing public access to air monitoring data collected during an emergency response." The Trump EPA pushed back against the recommendations, however. Now, the OIG says that EPA has agreed to a series of alternative recommendations but had yet to provide required action plans to implement them as of March 31.

Meanwhile, the OIG classes as "open" its recommendations to improve risk communications to communities living near facilities such as medical equipment sterilizers emitting the solvent ethylene oxide (EtO). In the Trump era, the OIG clashed repeatedly with EPA management, including then-Administrator Andrew Wheeler, over its handling of this issue, after the OIG found EPA had failed to inform 25 communities of the risks they face from EtO, classified by EPA as a carcinogen.

"The then-administrator's decision to not implement the original OIG recommendation to warn residents of the risk of exposure to ethylene oxide impedes effective and transparent risk communication by the EPA. In our report, we found that the EPA identified 25

high priority ethylene oxide-emitting facilities that contributed to elevated estimated cancer risks, but the EPA or the states only communicated those risks to nine of the 25 affected communities,” the OIG’s new report says. Wheeler instead committed to a series of less-onerous actions than those put forward by the OIG.

The OIG has since also recommended that EPA tighten its air toxics rules for EtO in several industry sectors, but it remains unclear exactly how EPA will do so, or when.

The OIG further views as “unresolved” the Trump EPA’s refusal to accept any of its recommendations to ensure the agency’s “full compliance” with its obligations under Civil Rights Act Title VI.

“The EPA’s External Civil Rights Compliance Office had not fully implemented an oversight system to identify and correct weaknesses in EPA funding recipients’ Title VI programs. By addressing these issues, the External Civil Rights Compliance Office could improve the implementation of Title VI by collecting additional data from recipient programs, enabling it to target vulnerable programs to assess and assure Title VI compliance,” the OIG says. -- *Stuart Parker* (sparker@iwpnews.com)

Editor’s Note: After this story was published, an EPA spokesperson provided the following response:

“The agency is working to implement corrective actions on the open recommendations in addition to working with the OIG on any unresolved recommendations.”